
HOUSE BILL 1746

State of Washington 54th Legislature 1995 Regular Session

By Representatives Sherstad, McMorris and Hymes

Read first time 02/07/95. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to overtime wage requirements for commissioned
2 salespeople; and amending RCW 49.46.130.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 49.46.130 and 1993 c 191 s 1 are each amended to read
5 as follows:

6 (1) Except as otherwise provided in this section, no employer shall
7 employ any of his employees for a work week longer than forty hours
8 unless such employee receives compensation for his employment in excess
9 of the hours above specified at a rate not less than one and one-half
10 times the regular rate at which he is employed.

11 (2) This section does not apply to:

12 (a) Any person exempted pursuant to RCW 49.46.010(5);

13 (b) Employees who request compensating time off in lieu of overtime
14 pay;

15 (c) Any individual employed as a seaman whether or not the seaman
16 is employed on a vessel other than an American vessel;

17 (d) Seasonal employees who are employed at concessions and
18 recreational establishments at agricultural fairs, including those
19 seasonal employees employed by agricultural fairs, within the state

1 provided that the period of employment for any seasonal employee at any
2 or all agricultural fairs does not exceed fourteen working days a year;

3 (e) Any individual employed as a motion picture projectionist if
4 that employee is covered by a contract or collective bargaining
5 agreement which regulates hours of work and overtime pay;

6 (f) An individual employed as a truck or bus driver who is subject
7 to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101
8 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation system
9 under which the truck or bus driver is paid includes overtime pay,
10 reasonably equivalent to that required by this subsection, for working
11 longer than forty hours per week;

12 (g) Any individual employed (i) on a farm, in the employ of any
13 person, in connection with the cultivation of the soil, or in
14 connection with raising or harvesting any agricultural or horticultural
15 commodity, including raising, shearing, feeding, caring for, training,
16 and management of livestock, bees, poultry, and furbearing animals and
17 wildlife, or in the employ of the owner or tenant or other operator of
18 a farm in connection with the operation, management, conservation,
19 improvement, or maintenance of such farm and its tools and equipment;
20 or (ii) in packing, packaging, grading, storing or delivering to
21 storage, or to market or to a carrier for transportation to market, any
22 agricultural or horticultural commodity; or (iii) commercial canning,
23 commercial freezing, or any other commercial processing, or with
24 respect to services performed in connection with the cultivation,
25 raising, harvesting, and processing of oysters or in connection with
26 any agricultural or horticultural commodity after its delivery to a
27 terminal market for distribution for consumption;

28 (h) Any industry in which federal law provides for an overtime
29 payment based on a work week other than forty hours. However, the
30 provisions of the federal law regarding overtime payment based on a
31 work week other than forty hours shall nevertheless apply to employees
32 covered by this section without regard to the existence of actual
33 federal jurisdiction over the industrial activity of the particular
34 employer within this state. For the purposes of this subsection,
35 "industry" means a trade, business, industry, or other activity, or
36 branch, or group thereof, in which individuals are gainfully employed
37 (section 3(h) of the Fair Labor Standards Act of 1938, as amended
38 (Public Law 93-259));

1 (i)(i) Commissioned salespeople employed by an employer primarily
2 engaged in the business of selling wholesale or retail products if:

3 (A) The salesperson makes a request to the employer in writing for
4 additional working time beyond forty hours per work week;

5 (B) The amount of working time beyond forty hours per work week is
6 determined by the salesperson and is at the salesperson's discretion;
7 and

8 (C) The salesperson has a reasonable expectation that working
9 beyond forty hours per week will increase the earnings received by the
10 salesperson.

11 (ii) For the purposes of this subsection (2)(i), "commissioned
12 salesperson" means a salesperson who is paid on the basis of a salary
13 plus commission.

14 (3) No employer of commissioned salespeople primarily engaged in
15 the business of selling automobiles, trucks, recreational vessels,
16 recreational vessel trailers, recreational vehicle trailers,
17 recreational campers, or manufactured housing to ultimate purchasers
18 shall violate subsection (1) of this section with respect to such
19 commissioned salespeople if the commissioned salespeople are paid the
20 greater of:

21 (a) Compensation at the hourly rate, which may not be less than the
22 rate required under RCW 49.46.020, for each hour worked up to forty
23 hours per week, and compensation of one and one-half times that hourly
24 rate for all hours worked over forty hours in one week; or

25 (b) A straight commission, a salary plus commission, or a salary
26 plus bonus applied to gross salary.

27 (4) No public agency shall be deemed to have violated subsection
28 (1) of this section with respect to the employment of any employee in
29 fire protection activities or any employee in law enforcement
30 activities (including security personnel in correctional institutions)
31 if: (a) In a work period of twenty-eight consecutive days the employee
32 receives for tours of duty which in the aggregate exceed two hundred
33 forty hours; or (b) in the case of such an employee to whom a work
34 period of at least seven but less than twenty-eight days applies, in
35 his or her work period the employee receives for tours of duty which in
36 the aggregate exceed a number of hours which bears the same ratio to
37 the number of consecutive days in his or her work period as two hundred
38 forty hours bears to twenty-eight days; compensation at a rate not less

1 than one and one-half times the regular rate at which he or she is
2 employed.

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